UNIV. OF MICH.
AUG 4 1955
LAW LIBRARY

Calendar No. 1169

84TH CONGRESS, 1st Session — SENATE — REPORT No. 1157

PROVIDING FOR THE APPROVAL OF DEEDS EXECUTED BY THE HEIRS OF ANNA HOLLYWOOD FICKZ

JULY 27, 1955.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 898]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 898) to provide for the issuance of an unrestricted deed to Mrs. Edith Hollywood, of Sitka, Alaska, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF MEASURE

H. R. 898 directs the Secretary of the Interior to approve deeds conveying an interest in a lot of a little less than 5 acres in Alaska, the appraised value of which is approximately $250, to the wife of 1 of the heirs of the original allottee.

The tract was allotted in 1935 to Mrs. Anna Hollywood Fickz, an Indian, with the certificate of title providing that the land was to be the homestead of the allottee and was to be inalienable and untaxed.

The allottee died in 1936, leaving 9 heirs. The wife of one of them, a Mrs. John Hollywood, had cared for Mrs. Fickz, then an invalid, for the last 6 years of her life. In recognition of her claim for services, the heirs wish to quitclaim their interest in the tract to Mrs. Hollywood. This legislation would authorize the Secretary to approve the deeds of those of the heirs who choose to quitclaim their interest.

The deeds which the Secretary is directed to approve by H. R. 898 would be subject to an existing right-of-way previously conveyed to the Territory of Alaska.

EXECUTIVE AGENCY REPORT

The favorable report of the Department of the Interior on H. R. 898, which was sponsored by the Delegate from Alaska, Hon. E. L. Bartlett, is set forth in full, as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., April 28, 1955.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.

MY DEAR MR. ENGLE: Your committee has requested a report on H. R. 898, a bill to provide for the issuance of an unrestricted deed to Mrs. Edith Hollywood, of Sitka, Alaska.

We recommend that the bill be enacted if amended as hereinafter suggested.

This bill directs the Secretary of the Interior to issue an unrestricted deed to Mrs. Edith Hollywood, of Sitka, Alaska, to a tract of land containing 4.97 acres (United States Survey 2289), allotted to Anna Hollywood Fickz pursuant to the act of May 17, 1906 (34 Stat. 197). The allotment was approved by the Secretary of the Interior on June 3, 1935, and a certificate was issued on June 17, 1941, which provided that the land "shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress." Congress has not otherwise provided by any subsequent legislation.

The allottee died in 1936. Her estate was probated by the Department in 1953 pursuant to the act of June 25, 1910 (36 Stat. 855). In 1953, the land was appraised at $248.50. The decedent's estate was divided among nine heirs. John Hollywood, the husband of Mrs. Edith Hollywood, was determined to hold a one-fourth interest therein, but Mrs. Hollywood herself, is not an heir. Mrs. Hollywood testified at the Department's probate hearing that the allottee's estate had previously been probated in the United States commissioner's court. At that time, Mrs. Hollywood made a claim for services rendered in caring for the allottee, who was incapacitated during the last 6 years of her life.

In apparent recognition of this claim, 8 of the 9 heirs, including John Hollywood, have attempted by quitclaim deeds to relinquish their interest in this land yo Mrs. Edith Hollywood. While the deeds are invalid, we believe that they should be validated to carry out the intent of the various grantors. The ninth heir has not indicated his intention to relinquish his interest to Mrs. Edith Hollywood.

We recommend that the bill be amended by deleting the words "directed to issue an unrestricted deed to Mrs. Edith Hollywood, of Sitka, Alaska, to" on lines 3 to 5, and by inserting in lieu thereof "authorized, in his discretion, to approve deeds executed by the heirs of Anna Hollywood Fickz conveying to Mrs. Edith Hollywood, of Sitka, Alaska, an interest in".

The Bureau of the Budget has advised us that there is no objection to the submission of this report to your committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

The Senate Interior and Insular Affairs Committee unanimously recommends enactment of H. R. 898.

○

UNIV. OF MICH.

AUG 4 1955

LAW LIBRARY

Calendar No. 1170

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1158

AUTHORIZING AND DIRECTING THE SALE OF CERTAIN LAND IN ALASKA TO JOHN EKONOMOS, OF THE FAIRBANKS PRECINCT, ALASKA

JULY 27, 1955.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 910]

The Committee in Interior and Insular Affairs, to whom was referred the bill (H. R. 910), to authorize and direct the sale of certain land in Alaska to John Ekonomos, of the Fairbanks Precinct, Alaska, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF MEASURE

H. R. 910 authorizes John Ekonomos, of Fairbanks Precinct, Alaska, to purchase all or any part of a 40-acre tract on which he has made an attempted homestead entry. The tract is part of an area which had been withdrawn by Executive order for a flood control project. The withdrawal has been lifted, and the lands occupied by Mr. Ekonomos were not used in connection with the project.

Previously, Mr. Ekonomos had homesteaded another tract, which he abandoned without compensation because of the flood control project.

Without this legislation, Mr. Ekonomos could lose the tract he has homesteaded because of veterans' preference. The bill as amended by the House provides that the United States shall be held harmless from damages resulting from flooding of the land in connection with the flood control project, and the Senate Interior Committee has concurred in this provision.

The proposed legislation, which was sponsored by the Delegate from Alaska, E. L. Bartlett, is approved by the Department of the Army, which operates the flood control project, the Department of the Interior, and the Bureau of the Budget. The favorable reports

of these agencies to the House Interior Committee are set forth in full below.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., April 13, 1955.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.

MY DEAR MR. ENGLE: This is in reply to your request for the views of this Department on H. R. 910, a bill to authorize and direct the sale of certain land in Alaska to John Ekonomos, of the Fairbanks Precinct, Alaska.

H. R. 910 would direct the Secretary to sell to John Ekonomos, at their reasonable value, 40 acres of unsurveyed land near Fairbanks, Alaska.

Mr. Ekonomos is a long-time resident of the Territory and had homesteaded 160 acres about 2 miles from the subject land. The subject 40-acre tract and lands surrounding it and surrounding Mr. Ekonomos' homestead were withdrawn by Executive Order No. 8020, dated December 2, 1938, in furtherance of the Tanana River and Chena Slough flood-control project. We have been informed that Mr. Ekonomos abandoned his own lands, which the flood-control project made subject to overflow, and established a home on the 40-acre tract in question. Apparently, the Army, which had jurisdiction over the flood-control reservation, did not disturb Mr. Ekonomos in his occupancy of the reserved tract. It is our understanding also that the Army did not purchase his private lands.

By Public Land Order No. 1039, dated December 20, 1954, the Acting Secretary revoked Executive Order No. 8020 in part, such revocation including the 40-acre tract in question. In order to segregate it from appropriation pending action on H. R. 910, the tract was withdrawn by Public Land Order 1075 of February 21, 1955 (20 F. R. 1240).

The bill would authorize the Secretary to sell to Mr. Ekonomos the lands he is now occupying. Since the occupancy occurred during the period in which the Army was in control of the lands, the Department of the Army is in a better position than we are to describe the equities involved. We know of no objection to the bill.

It is possible that Mr. Ekonomos may wish to purchase less than the full 40-acre tract, though the Department, of course, would have no objection to his purchase of the whole. Therefore, it is suggested that the comma at the end of line 5 and all of lines 6 through 9, page 1, be deleted and the following substituted therefore:

"all or any part of the unsurveyed public lands in Alaska described in this section, and the Secretary of the Interior is directed to convey the lands applied for. The area subject to application and sale under this Act is that public land which when surveyed will constitute the southwest quarter of the northwest quarter, section 28,".

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

DEPARTMENT OF THE ARMY,
March 7, 1955.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H. R. 910, 84th Congress, a bill to authorize and direct the sale of certain land in Alaska to John Ekonomos, of the Fairbanks Precinct, Alaska. The Secretary of Defense has delegated to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

The Department of the Army has considered the above-mentioned bill. The purpose of the bill is indicated in its title.

The 40-acre tract described in H. R. 910 is a portion of approximately 24,503 acres of public domain lands temporarily withdrawn by Executive Order 8020, dated December 2, 1938, from settlement, location, sale, or entry, for flood-control purposes in connection with the Tanana River and Chena Slough flood-control

project authorized by the act of Congress approved June 28, 1938 (52 Stat. 1223). The rentention of some of these lands, including the above-mentioned 40 acres, is no longer required for the Tanana River and Chena Slough flood-control project. The Department of the Army so informed the Department of the Interior in August 1954, but recommended that any patents issued after restoration of the land to the public domain reserve to the United States a flowage easement in order to protect the United States and/or Territory of Alaska against claims arising from damages caused by future floods. These lands were ressored to the public domain by Public Land Order No. 1039, dated December 20, 1954 (19 F. R. 9196).

In the event the disposition of the 40 acres described in H. R. 910 in the manner provided therein is favorably considered, it is recommended that the following additional proviso be added at the end thereof:

"*Provided, further*, That in the deed conveying said lands, there shall be reserved to the United States and/or the Territory of Alaska the right to flood such lands intermittently in connection with the operation and maintenance of the Tanana River and Chena Slough Flood Control Project."

The enactment of this measure will not involve the expenditure of any Federal funds.

Inasmuch as the committee has requested that the report be expedited, it is submitted without a determination by the Bureau of the Budget as to whether or not it conforms to the program of the President. As soon as such advice is received it will be forwarded to your committee.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF LEGISLATIVE LIAISON,
Washington, D. C.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to the letter of March 7, 1955, from the Secretary of the Army to you, expressing the views of the Department of Defense with respect to H. R. 910, 84th Congress, a bill to authorize and direct the sale of certain land in Alaska to John Ekonomos, of the Fairbanks Precinct, Alaska.

Inasmuch as the committee had requested that action be expedited, the report was submitted to the committee without a determination by the Bureau of the Budget as to whether it conformed to the program of the President.

This is to inform you that the Bureau of the Budget, on March 8, 1955, advised the Department of the Army that it had no objection to the report submitted to you on March 7, 1955.

Sincerely yours,

C. J. HAUCK, Jr.,
Brigadier General, GS,
Chief of Legislative Liaison.

The Senate Interior Committee is unanimous in urging favorable action on H. R. 910.

○

UNIV. OF MICH.
AUG 4 1955
LAW LIBRARY

Calendar No. 1171

84TH CONGRESS, 1st Session — SENATE — REPORT No. 1159

AUTHORIZING AND DIRECTING THE ISSUANCE OF PATENT TO ROBERT W. RETHERFORD OF ANCHORAGE, ALASKA, TO CERTAIN LAND IN ALASKA

JULY 27, 1955.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 4718]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 4718) to authorize and direct the issuance of patent to Robert W. Retherford of Anchorage, Alaska, to certain land in Alaska, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

The purpose of H. R. 4718 is to authorize and direct the Secretary of the Interior to issue a patent to certain specifically described land in Alaska to Robert W. Retherford, a World War II Navy veteran who, through administrative error, was allowed to make homestead entry and start improving on a quarter section withdrawn for classification and in aid of legislation in connection with the Matanuska Valley project. The veteran has built a log cabin home and partially constructed small domestic powerplant toward fulfillment of his homesteading obligations.

The report of the Interior Department states it lacks authority to give the homesteading veteran the necessary priority, and recommends the bill, which was sponsored by the Delegate from Alaska, Hon. E. L. Bartlett, with the amendment adopted by the House. This amendment would place Mr. Retherford on the same footing as that on which he would have been if the lands which are the subject of H. R. 4718 had not been withdrawn.

EXECUTIVE AGENCY REPORT

The favorable report of the Department of the Interior is set forth in full as follows.

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., July 7, 1955.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.

MY DEAR MR. ENGLE: This is in reply to your request for the views of this Department on H. R. 4718, a bill to authorize and direct the issuance of patent to Robert W. Retherford of Anchorage, Alaska, to certain land in Alaska.

We would have no objection to the enactment of H. R. 4718, if it were amended as suggested below.

Section 1 of this bill would direct the Secretary of the Interior to issue a patent to Robert W. Retherford for the NW¼ sec. 35, T. 19 N., R. 1 E., Seward meridian, Alaska, in connection with homestead entry Anchorage 021660. The issuance of this patent would be conditioned upon final proof, as required by law, being filed, and such final proof would be considered as having been made by April 27, 1953. Section 2 of the bill would require that application for patent be filed within 1 year of the effective date of the act.

On August 11, 1952, Mr. Retherford filed a homestead application for the lands in question. His entry was allowed on August 21, 1952, but, in allowing his entry the Anchorage Land Office erred because the land had been withdrawn from entry by Executive Order No. 6957 of February 4, 1935, for classification and in aid of legislation in connection with the Matanuska Valley project. Upon discovery of the error by the Anchorage Land Office on April 28, 1953, the notice of allowance of the entry was vacated and Mr. Retherford's application was rejected.

We are informed that Mr. Retherford initiated settlement on January 11, 1953, and was constructing a log cabin home and a small domestic electric powerplant on the land. The Department cannot provide full administrative relief because if it opens the lands to entry, it must under the law grant a preference right of application to veterans of World War II and of the Korean conflict. The Department could require a subsequent entryman to compensate Mr. Retherford for the improvements placed on the land which cannot be removed without substantial damage to them or to the land, but otherwise the Department cannot grant any relief with assurance. Therefore, we would have no objection to the enactment of this bill, since it would afford Mr. Retherford relief otherwise unavailable to him.

However, we believe that the proviso to section 1, requiring the filing of final proof, "such filing to be considered as having been made by April 27, 1953," requires amendment. Since we understand that settlement was not initiated until January 11, 1953, satisfactory final proof could not be made as of April 27. Since Mr. Retherford served in the Navy for about 3 years during the period of 1943, to 1946, the proviso may have been inserted to insure that he would have the veterans' privileges granted prior to the act of June 18, 1954 (68 Stat. 253) which amended the Veterans' Preference Act of September 27, 1944, as amended (43 U. S. C., sec. 279–284). Prior to that amendment, honorably discharged veterans with 3 years' service were excused from the cultivation requirements of the homestead laws if they made timely final proof as to residence and construction of a habitable house.

In its report on the amendment to the Veterans' Preference Act, the Senate Committee on Interior and Insular Affairs reported that, in its opinion, it was never intended to give patents to homesteads without clear proof of an intent to develop those homesteads into farms; nevertheless, that had been the effect under the existing interpretation (S. Rept. 1224, 83d Cong., 2d sess., 2 (1954)). Since an administration error led to erroneous allowance of the entry, we have no objection to Mr. Retherford being placed on the same footing as that on which he would have been if the lands in question had not been withdrawn. We suggest, therefore, that the proviso be revised along the following lines: "*Provided*, That, within one year after the effective date of this Act, satisfactory final proof is

filed as required by the law and regulations in effect on August 21, 1952." If the proviso is amended in this manner, section 2 of the bill will be unnecessary.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

H. R. 4718 is unanimously recommended by the Senate Committee on Interior and Insular Affairs.

○

UNIV. OF MICH.
AUG 4 1955
LAW LIBRARY

Calendar No. 1172

84TH CONGRESS, 1st Session — SENATE — REPORT No. 1160

INCLUDING AS SPANISH-AMERICAN WAR SERVICE UNDER LAWS ADMINISTERED BY THE VETERANS' ADMINISTRATION CERTAIN SERVICE RENDERED BY STEPHEN SWAN OGLETREE DURING THE SPANISH-AMERICAN WAR

JULY 27, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 6232]

The Committee on Finance, to whom was referred the bill (H. R. 6232) to include as Spanish-American War service under laws administered by the Veterans' Administration certain service rendered by Stephen Swan Ogletree during the Spanish-American War, having considered the same, report favorably thereon with an amendment, and recommend that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert:

That, for the purpose of laws administered by the Veterans' Administration, it shall be considered that Stephen Swan Ogletree was honorably discharged from Company G, Second Regiment Alabama Volunteer Infantry, after having rendered at least seventy days active military service therein during the Spanish-American War. No benefit shall be afforded hereunder for any period prior to the date of receipt of an application therefor filed subsequent to the date of enactment of this Act.

EXPLANATION OF AMENDMENT

The bill, in the form in which it passed the House of Representatives, if enacted into law would be ineffectual to provide any benfits to Mr. Ogletree under laws administered by the Veterans' Administration. Spanish-American War pension laws in addition to the requirement of 70 days' service, require an honorable discharge. This amendment perfects the bill.

GENERAL STATEMENT

After a careful review of the case file in the Veterans' Administration, it was apparent to the Committee on Finance that Mr. Ogletree did render service in Company G, 2d Alabama Volunteer Infantry,

in 1898. In view of the conflict in testimony on file, the committee feels that an equitable solution would be to resolve the doubts in favor of Mr. Ogletree and recommend that the minimum of at least 70 days' service be recognized as Spanish-American War service for purposes of laws administered by the Veterans' Administration. The committee gave considerable weight to the affidavit of the Honorable William W. Brandon, former Governor of Alabama, who served as a major in the 2d Alabama Volunteer Infantry. He states that Mr. Ogletree reported to Company G at Camp Clark, Ala., was detailed to recruiting duty and served for some time. Governor Brandon states this company was moved to Spring Hill, Ala., and he was informed that Mr. Ogletree was discharged at Spring Hill for physical disability.

The House report on this bill sets forth more detailed information and is as follows:

PURPOSE

The purpose of the proposed legislation is to provide that, for the purpose of laws administered by the Veterans' Administration, it shall be considered that Stephen Swan Ogletree, who was a member of Company G, 2d Regiment, Alabama Volunteer Infantry, had at least 90 days' active military service during the Spanish-American War as of the date of enactment of the bill.

STATEMENT OF FACTS

Ogletree contends that during the the Spanish-American War he was a member of Company G, 2d Alabama Regiment, from Eufaula, Ala., his hometown; that he was a member of that company and went with that company to Mobile, Ala., and later was sent back to Eufaula as a recruiting officer to build up that company's strength, and that he was a member of that company for more than 90 days.

If his contentions are true, then Ogletree has been denied for many years the rights that he would have been entitled to, if his claim of facts had been accepted. Several private bills for relief of Ogletree have heretofore been filed, viz, H. R. 12543, 71st Congress; H. R. 6361, 72d Congress; H. R. 3609, 79th Congress; H. R. 1099, 83d Congress.

None of the above bills were enacted. Indeed, from the record before this subcommittee, none of them were passed on favorably or unfavorably. A study of the record furnishes abundant reason for the failure of any subcommittee to come to a conclusion for the sole reason that the evidence is practically impossible to reconcile. The record shows that Ogletree is now about 76 years of age, and this subcommittee realizes that if this matter is to be determined in the lifetime of Ogletree, this matter must be resolved and determined without further delay.

The question to be determined is: Was Ogletree a member of Company G, 2d Regiment, Alabama Infantry, in 1898, and, if so, did he as such a member have at least 90 days' active military service during the Spanish-American War? If that question is answered affirmatively, he was eligible for pension under the act of 1926 (44 Stat. 382), granting pensions to soldiers and sailors of the war with Spain, and was on January 7, 1928, the date he made application for pension, entitled to those pension rights. If he was as claimed, he has lost pension rights from January 7, 1928, to the date of the passage of this bill.

Ogletree has been denied pension rights on the premise that "an exhaustive search of the records of the Department of the Army shows that Ogletree's name does not appear on any muster roll or any other record that would indicate that he served with Company G, 2d Regiment, Alabama Volunteer Infantry, after it was mustered into the service of the United States, May 31, 1898."

This premise is taken from the report from the Department of the Army. The Department of the Army says, however, "After a long search a stub of a transportation request was found in a box entitled 'Miscellaneous record of regimental correspondence'." This was the stub of a request for transportation, dated "Mobile, Ala., May 19, 1898," and directed to "The L. & N. RR. Co." for "John H. Nowland and 26 men" for transportation from "Mobile, Ala.," to "Eufaula, Ala." The following remark was recorded on the stub: "Recruits Co. G, 2 Regt. Ala. Vols. Rejected by Medical Board." On the reverse of this

stub were the names "John H. Nowland and Stephen S. Ogletree" and 25 other names, including the name "James W. Winslette." It was the view of the Department of the Army, and a plausible conclusion, that Ogletree, Nowland, Winslette, and the other names recited on the back of the stub were released for medical disability before the company was mustered into the United States Army, and that this explains why the name of Ogletree has never appeared on any muster roll. This is persuasive indeed to this subcommittee.

But there is most persuasive evidence in favor of the contention of Ogletree. Congressman Andrews, the author of this present bill, testified before this subcommittee that he found in the papers of his predecessor, Congressman Steigel, who had introduced a similar bill for Ogletree, a notation to this effect: I know of my own knowledge that this man served. I can almost testify to his service." Congressman Steigel, like Congressman Andrews, knew Ogletree. These Congressmen, along with Ogletree, lived their lives in a rural community, and the statement of Congressman Steigel reflects a personal knowledge that this subcommittee must take note of. It is evident that Congressman Steigel knew enough about this Eufaula company and Ogletree that he felt that he could almost swear positively that Ogletree was correct. In the file in the Bureau of Pensions will be found 10 affidavits, executed in 1927 and 1928 by former members of the 2d Regiment, Alabama Volunteer Infantry, and these affidavits are to the effect that Ogletree did serve as contended and that he served for more than 90 days, as required by law. Congressman Andrews testified before this subcommittee regarding the witnesses in behalf of Ogletree, and it appeared that Congressman Andrews knew L. H. Brazila, a member of that company; also W. T. Sheehan, who in later years was editor of the Montgomery Advertiser; also William W. Brandon, who later was Governor of the State of Alabama, and Congressman Andrews testified that it was his recollection that Brandon was a major in the outfit that Ogletree served. Indeed the affidavit of Brandon recites: "I served as captain of Company F and major of the 2d Alabama Infantry, United States Volunteers, and was with that regiment from the time it was mustered in to the time it was mustered out and Company G was commanded by J. H. Brazila," and that W. T. Sheehan was first sergeant in Company G, and he saw him there. Brandon testified that he knew Ogletree did serve with Company G. Sheehan made affidavit that Ogletree was a member of that company at the same time that he was, and that Ogletree remained with that company for a length of time that in his judgment exceeded 90 days, and that he knows as a matter of fact that Ogletree was in the service of the United States Army for 90 days or longer and that Ogletree's name should appear on the roster, because he called the roll, and knows the claimant Ogletree to be the identical Ogletree who was in that service.

What is going to be done with the testimony of 10 men of high repute who say that Ogletree did serve the length of time that would entitle him to the right he is asking for? Also, what is going to be done with the statement of Congressman Steigel, heretofore quoted above? It is plain that Congressman Andrews, from having lived in the section Ogletree resides in, and information acquired thereby, believed that Ogletree has been unjustly dealt with, and now should have relief.

This conflict in testimony could never be resolved beyond a reasonable doubt On the other hand, this committee does not believe that is the test. Surely a preponderance of evidence is all that should be required, that is to say, that the evidence required should only be sufficient to incline the minds of reasonable men to one side of the issue, rather than to the other. It certainly is true that many men have served their country and their names have not appeared on the rolls. Indeed, members of this committee take judicial cognizance that such things have occurred, and have occurred without culpable fault on the part of the military. If Ogletree is granted this right now, unless he is exceedingly fortunate in living beyond his normal span of life, it will cost the Government little. If he is denied this right now, he may go to his grave knowing that he was a victim of unfortunate circumstances. This committee resolves the doubt in favor of Ogletree, and recommends that this bill be amended so that said Ogletree shall, from the enactment of this bill, be considered a member of Company G, 2d Regiment, Alabama Volunteer Infantry, and had at least 90 days' service during the Spanish-American War, and recommends its favorable consideration.

DEPARTMENT OF THE ARMY,
Washington 25, D. C., August 27, 1953.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 1099, 83d Congress, a bill to include as Spanish-American War service under laws administered by the Veterans' Administration certain service rendered by Stephen Swan Ogletree during the Spanish-American War, and requesting a report on the merits of the bill.

This bill provides as follows: "That, for the purpose of laws administered by the Veterans' Administration, it shall be considered that Stephen Swan Ogletree, who was a member of Company G, Second Regiment, Alabama Volunteer Infantry, had at least ninety days active military service during the Spanish-American War."

A thorough search of the records of the Department of the Army fails to disclose that Stephen Swan Ogletree served in the military service of the United States during the Spanish-American War.

On January 7, 1928, Mr. Ogletree filed with the Department of the Interior, Bureau of Pensions, a declaration for pension under the act of May 1, 1926 (44 Stat. 382), entitled "An act granting pensions and increase of pensions to certain soldiers and sailors of the war with Spain, the Philippine insurrection, or the China relief expedition, to certain mained soldiers, to certain widows, minor children, and helpless children of such soldiers and sailors, and for other purposes." Mr. Ogletree alleged that he was born in Quitman County, Ga., on October 4, 1879; that he enlisted in Company G, 2d Regiment, Alabama Volunteer Infantry, at Eufaula, Ala., in 1898, under the name "S. Swan Ogletree"; and that he was discharged at Spring Hill, Ala., in 1898.

Mr. Ogletree's application for a pension was rejected on May 18, 1928, on the ground that his name did not appear on the rolls of Company G, 2d Regiment, Alabama Volunteer Infantry.

In support of his declaration for a pension, Mr. Ogletree also filed 10 affidavits, executed in 1927 and 1928 by former members of the 2d Regiment, Alabama Volunteer Infantry. The affidavits, although they do not identify the events set forth therein by day, month, or year, each tell substantially the same story. Resolving all ambiguities and contradictions in favor of Mr. Ogletree, these affidavits state that Company G, 2d Regiment, Alabama Volunteer Infantry, was commonly known as the Eufaula Company; that Mr. Ogletree was a member of Company G at the time the company left Eufaula, Ala., "when called out for service by the United States War Department" during the Spanish-American War; that Mr. Ogletree accompanied Company G to Camp Clark near Monroe Park, Mobile County, Ala.; that he was accepted by the physical examiners at Camp Clark; that, while at Camp Clark, the commanding officer of Company G, Capt. J. R. Barr, sent Mr. Ogletree, together with others back to Eufaula, Ala., for recruiting duty; that "he remained out on this duty for some length of time which in my judgment extended beyond 90 days"; that the company moved to a new camp at Spring Hill, Ala.; that Mr. Ogletree rejoined the company at either Camp Clark or Spring Hill; and that, just prior to the time the company was ordered to Miami, Fla., Mr. Ogletree was rejected by the medical examiners at Spring Hill, on account of being underweight.

An exhaustive search of the records of the Department of the Army shows that Mr. Ogletree's name does not appear on any muster roll or other record that would indicate that he served with Company G, 2d Regiment, Alabama Volunteer Infantry, after it was mustered into the service of the United States on May 31, 1898. Furthermore, said search fails to disclose that Mr. Ogletree ever had any Federal military service with any component of the Army of the United States during the Spanish-American War. After a long search a stub of a transportation request was found in a box entitled "Miscellaneous record of regimental correspondence." This was the stub of a request for transportation, dated "Mobile, Ala., May 19, 1898", and directed to "The L. & N. RR. Co." for "John H. Nowland and 26 men" for transportation from "Mobile, Ala.," to "Eufaula, Ala" The following remark was recorded on the stub:

"Recruits Co. G, 2 Regt. Ala. Vols.

"Rejected by Medical Board."

On the reverse of this stub were the names "John H. Nowland and Stephen S. Ogletree" and 25 other names, including the name "James W. Winslette." (A "Jim Winslett" executed one of the afore-mentioned affidavits submitted by Mr. Ogletree.)

It is apparent from an examination of this evidence that Mr. Ogletree was rejected for Federal military service by medical examiners over 10 days before Company G, 2d Regiment, Alabama Volunteer Infantry, was mustered into the service of the United States on May 31, 1898, and that he did not serve with said company while it was in the active Federal service.

In the light of the foregoing facts and circumstances there appears to be no justifiable basis for the enactment of H. R. 1099. The Department of the Army, accordingly, recommends that this bill be not favorably considered by the Congress.

Several private bills for the relief of Mr. Ogletree have been introduced in prior Congresses, namely, H. R. 12543, 71st Congress; H. R. 6361, 72d Congress; and H. R. 3609, 79th Congress (the text of which is identical with H. R. 1099, 83d Cong.). None of those bills were enacted. On August 24, 1945, the Administrator of Veterans' Affairs submitted an adverse report on H. R. 3609, 79th Congress, to the chairman, Committee on Military Affairs, House of Representatives.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

EARL D. JOHNSON,
Acting Secretary of the Army.

○